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FAA-02-12199-2

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, and 65

[Docket No. FAA-2002-12199 ; Special Federal Aviation Regulation No. 96 1 2P 4/29/02]

RIN 2120-AH58

Relief for Participants in Operation Enduring Freedom

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a Special Federal Aviation Regulation (SFAR) that allows Flight Standards District Offices (FSDO) to accept expired flight instructor certificates and inspection authorizations for renewals from civilian and military personnel who serve in Operation Enduring Freedom. Additionally, this SFAR allows FSDOs to accept expired airman written test reports from civilian and military personnel who serve in Operation Enduring Freedom. This action is necessary to avoid penalizing airmen who are unable to meet the regulatory time limits of their flight instructor certificate, inspection authorization, or airman written test report solely because of their service in Operation Enduring Freedom. The effect of this action is to give these airmen extra time to meet certain eligibility requirements in the current rules.

DATES: This SFAR is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. We must receive comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This SFAR expires [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Pub: 5/6/02
part VI

ADDRESSES: Mail your comments to the Public Docket Office, Department of Transportation, 400 Seventh Street, SW, Room PL-401, Washington, DC 20590-0001. Or, send your comments through the Internet to <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: John Lynch, Certification Branch, AFS-840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-3844.

SUPPLEMENTARY INFORMATION

Your Comments Are Welcome

Under 14 CFR part 11, the FAA may issue a final rule with request for comments, which is a rule issued in final (with an effective date) that invites public comment on the rule. Although this action is a final rule and was not preceded by a notice of proposed rulemaking, we invite your comments on this SFAR. The most useful comments are those that are specific and related to issues raised by the SFAR, and that explain the reason for any recommended change. We specifically invite comments on the economic, environmental, energy, federalism, international trade, energy, and overall regulatory aspects of the SFAR that might suggest a need to modify it. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

To ensure consideration, you must identify the Rules Docket number in your comments, and you must submit comments to one of the addresses specified under the ADDRESSES section of this preamble. We will consider all communications received on or before the closing date for comments, and we may amend or withdraw this SFAR in light of

the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. We will file in the Rules Docket a report that summarizes each public contact related to the substance of this rule.

You may review the public docket containing comments on this SFAR in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the address specified in the ADDRESSES section. Also, you may review the public docket on the Internet at <http://dms.dot.gov>.

If you want us to acknowledge receipt of your comments submitted in response to this rule, you must include with your comments a self-addressed, stamped postcard on which you identify the Rules Docket number of this rulemaking. We will date stamp the postcard and return it to you.

Availability of Rulemaking Documents

You can get an electronic copy of this SFAR using the Internet through FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or through the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can get a paper copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity. If your organization is a small entity and you have a question, contact your local FAA official. If you don't know how to contact your local FAA official, you may contact the FAA Office of Rulemaking, ARM-27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (888) 551-1594. Internet users can find additional information on SBREFA in the FAA's web page at <http://www.faa.gov/avr/arm/sbrefa.html>. You may send inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Background

As a result of the events of September 11, 2001, many U.S. military and civilian personnel are serving and will serve in Operation Enduring Freedom. Some of these personnel are serving or will serve in locations outside the United States. Due to the length of these assignments, flight instructor certificates, inspection authorizations, and airman written test reports held by these individuals may expire before they return home. If so, these individuals would then have to undergo the process of reestablishing their qualifications. The FAA believes that it would be unfair to penalize in this way the men and women who are serving their country in Operation Enduring Freedom.

The FAA has recently taken similar action in response to the terrorist acts of September 11. On October 12, 2001, we issued a final rule that extends the time allowed for

14 CFR part 121 and part 135 check airmen (simulator), part 121 and part 135 flight instructors (simulator), part 121 aircraft dispatchers, and part 142 training center instructors, to meet certain qualification requirements, in-flight line observation programs, or operating familiarization as part of their periodic qualifications (See 66 FR 52278).

The purpose of this SFAR is to respond to the needs of civilian and military personnel who are serving overseas in support of Operation Enduring Freedom. Most of these airmen will be located at military bases that are away from their normal training or work environment. There will be no FAA aviation safety inspectors, designated examiners, or FAA facilities readily available in the areas where these airmen are assigned. The FAA has determined that we should provide relief to those people who are unable to comply with the regulatory time constraints of their flight instructor certificate, inspection authorization, or airman written test report as a result of their assignment in support of Operation Enduring Freedom. Under similar circumstances in the past, the FAA has taken similar action. During Operation Desert Shield/Desert Storm, the FAA issued SFAR No. 63 for this same purpose (See 56 FR 27160, June 12, 1991).

As described below, the SFAR we are adopting today is narrowly focused on providing a reasonable amount of regulatory relief to a specific class of individuals while avoiding, to the extent possible and foreseeable, unintended adverse impacts on safety. For example, although the SFAR gives additional time for renewing a flight instructor certificate, the person will still have to meet the proficiency or experience requirements of

14 CFR 61.197.

Who is affected by this SFAR?

To be eligible for the relief provided by this SFAR, a person must meet two criteria, one relating to the person's assignment and one to the expiration of the person's certificate, authorization, or test report.

Assignment. The person must have served in a civilian or military capacity in support of Operation Enduring Freedom outside the United States some time between September 11, 2001 and [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The term "United States" is defined under 14 CFR 1.1 and means "the States, the District of Columbia, Puerto Rico, and the possessions, including the territorial waters and the airspace of those areas." The person must be able to show that he or she had the assignment by providing certain kinds of documents (described below).

Expiration. The person's flight instructor certificate, inspection authorization, or airman written test report must have expired some time between September 11, 2001 and 6 calendar months after returning to the United States, or by [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], whichever date is earlier.

Renewing a Flight Instructor Certificate

The FAA regulations governing flight instructor certificates provide that they expire 24 calendar months after the month of issuance. The regulations also provide that a flight instructor may renew his or her certificate before it expires, but if it expires, the flight instructor must get a new certificate. If you are interested in the details of how to get or renew a flight instructor certificate, please see 14 CFR 61.197 and 199.

This SFAR changes the existing regulations for a certain class of individuals by allowing FAA Flight Standards District Offices to accept for a limited amount of time an

expired flight instructor certificate for the purpose of renewing the certificate. Therefore, a person who can show the kind of evidence required by this SFAR (described below) could apply for renewal of a flight instructor certificate under 14 CFR 61.197. A person must not exercise the privileges of a flight instructor certificate if it has expired, but the person can renew the flight instructor certificate under the limited circumstances described in this SFAR.

Airman Written Test Reports of Parts 61, 63, and 65

Generally, FAA regulations give airmen a limited amount of time to take a practical test after passing a knowledge test. For example, 14 CFR 61.39(a)(1) gives a person 24 calendar months. This SFAR permits an extension of the expiration date of the airman written test reports of parts 61, 63, and 65. The extension can be for up to 6 calendar months after returning to the United States or [INSERT DATE 2 YEARS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], whichever date is earlier.

Renewing an Inspection Authorization

Under 14 CFR 65.92, an inspection authorization expires on March 31 of each year. Under 14 CFR 65.93, a person can renew an inspection authorization for an additional 12 calendar months by presenting certain evidence to the FAA during the month of March. This SFAR changes the existing regulations for individuals eligible under this SFAR by allowing FAA Flight Standards District Offices to accept for a limited amount of time an expired inspection authorization for the purpose of renewing the authorization. Therefore, a person who can show the kind of evidence required by this SFAR (described below) can apply for renewal of an inspection authorization under 14 CFR 65.93. If an inspection authorization expires while a person is assigned to Operation Enduring Freedom, the person must not exercise the privileges of the authorization until that person renews the

authorization. In this case, to meet the renewal requirements the person must attend a refresher course [See § 65.93(a)(4)] or submit to an oral test [See § 65.93(a)(5)] within 6 months after returning from Operation Enduring Freedom.

Evidence of Participation in Operation Enduring Freedom

Under this SFAR, a person must show one of the following kinds of evidence to establish that the person is eligible for the relief provided by this SFAR:

1. An official U.S. Government notification of personnel action, or equivalent document, showing the person was a civilian on official duty for the U.S. Government in support of Operation Enduring Freedom outside the United States some time between September 11, 2001, and [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER];

2. Military orders showing the person was assigned to duty outside the United States in support of Operation Enduring Freedom some time between September 11, 2001, and [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]; or

3. A letter from the person's unit commander or supervisor providing the dates during which the person served outside the United States in support of Operation Enduring Freedom some time between September 11, 2001, and [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Justification for Final Rule with Request for Comments

Under the Administrative Procedure Act, 5 U.S.C. 553, agencies generally must publish regulations for public comment and give the public at least 30 days notice before adopting regulations. There is an exception to these requirements if the agency for good

cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. When we invoke the “good cause” exception, we have to publish a statement of our finding and the reasons for it.

Under our regulations at 14 CFR part 11, we are issuing this SFAR as a final rule with request for comment. We have determined that issuing a notice of proposed rulemaking (NPRM) is unnecessary. An NPRM is unnecessary because we don’t anticipate any substantive comments. When we issued SFAR No. 63 for Operation Desert Shield/Desert Storm, we received only two comments, both of which were favorable (See 56 FR 27160, June 12, 1991). We will consider any comments that we receive on or before the closing date for comments, and we may amend or withdraw this SFAR in light of the comments we receive. We also find good cause to make this SFAR effective immediately upon publication. To make this SFAR effective 30 days after publication in the Federal Register would be contrary to the public interest. A delayed effective date could adversely affect the ability of airmen to get renewals in a timely fashion.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that relate to this SFAR.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the FAA has determined that there are no new requirements for information collection associated with this SFAR.

Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review, directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more, in any one year (adjusted for inflation).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the regulation doesn't warrant a full evaluation, a statement to that effect and the basis for it is included in the preamble. The FAA has determined that the expected economic impact of this SFAR is so minimal that it doesn't

warrant a full regulatory evaluation. This action imposes no costs on operators subject to this rule; however, it does provide some unquantifiable benefits to some who would avoid the costs of having to reestablish expired credentials. Since benefits exceed costs, the FAA has determined that this SFAR is consistent with the objectives of Executive Order 12866.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule isn’t expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis isn’t required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action imposes no costs on any small entities subject to this rule; however, it does provide some unquantifiable benefits to some of them. Consequently, the FAA certifies

that the rule won't have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, aren't considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule to be minimal and therefore has determined that this rule won't result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This SFAR doesn't contain such a mandate. Therefore, the requirements of Title II of UMRA don't apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action won't have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule doesn't have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

We have assessed the energy impact of this SFAR in accord with the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. We have determined that this SFAR isn't a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

14 CFR Part 63

Air safety, Air transportation, Airman, Aviation safety, Safety, Transportation.

14 CFR Part 65

Airman, Aviation safety, Air transportation, Aircraft.

The Rule

In consideration of the foregoing, the Federal Aviation Administration amends parts 61, 63, and 65 of Title 14 of the Code of Federal Regulations as follows:

PART 61 - CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302

2. Add Special Federal Aviation Regulation (SFAR) No. 96 to read as ^{9P} 5/1102 follows:

^{9P} 5/1102 SFAR No. 96 -- **RELIEF FOR PARTICIPANTS IN OPERATION ENDURING FREEDOM**

1. Applicability. Flight Standards District Offices are authorized to accept from an eligible person, as described in paragraph 2 of this SFAR, the following:

- (a) An expired flight instructor certificate to show eligibility for renewal of a flight instructor certificate under § 61.197, or an expired written test report to show eligibility under part 61 to take a practical test;

- (b) An expired written test report to show eligibility under §§ 63.33 and 63.57 to take a practical test; and

- (c) An expired written test report to show eligibility to take a practical test required under part 65 or an expired inspection authorization to show eligibility for renewal under § 65.93.

2. Eligibility. A person is eligible for the relief described in paragraph 1 of this SFAR if:

(a) The person served in a civilian or military capacity in support of Operation Enduring Freedom outside the United States during some period of time from September 11, 2001, to [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER];

(b) The person's flight instructor certificate, airman written test report, or inspection authorization expired some time between September 11, 2001, and 6 calendar months after returning to the United States, or [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], whichever is earlier; and

(c) The person complies with § 61.197 or § 65.93 of this chapter, as appropriate, or completes the appropriate practical test within 6 calendar months after returning to the United States, or [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], whichever is earlier.

3. Required documents. The person must present in person the Airman Certificate and/or Rating Application (FAA Form 8710-1) to the appropriate Flight Standards District Office. The person must include with the application one of the following documents, which must show the date of assignment outside the United States and the date of return to the United States:

(a) An official U.S. Government notification of personnel action, or equivalent document, showing the person was a civilian on official duty for the U.S. Government in support of Operation Enduring Freedom outside the United States some time between

September 11, 2001, and [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER];

(b) Military orders showing the person was assigned to duty outside the United States in support of Operation Enduring Freedom some time between September 11, 2001, and [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]; or

(c) A letter from the person's unit commander or supervisor providing the dates during which the person served outside the United States in support of Operation Enduring Freedom some time between September 11, 2001, and [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

4. Expiration date. This Special Federal Aviation Regulation No. 96 expires [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] unless sooner superseded or rescinded.

PART 63 - CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

4. Add Special Federal Aviation Regulation (SFAR) No. 96 by reference as follows:

Special Federal Aviation Regulations

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SFAR No. 96 -- RELIEF FOR PARTICIPANTS IN OPERATION ENDURING FREEDOM

**PART 65 -- CERTIFICATION: AIRMEN OTHER THAN FLIGHT
CREWMEMBERS**

5. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-
45103, 45301-45302.

6. Add Special Federal Aviation Regulation (SFAR) No. 96 by reference as ^{9P}51102
follows:

Special Federal Aviation Regulations

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**SFAR No. 96 -- RELIEF FOR PARTICIPANTS IN OPERATION ENDURING
FREEDOM**

Issued in Washington, DC, on APR 29 2002


Jane F. Garvey

Administrator